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JUN 04 2007

*In re* Application of:  
DUNKI-JACOBS, ROBERT J. et al  
Serial No.: 10/713,637  
Filed: Nov. 14, 2003  
Docket: END-5240  
Title: METHODS AND DEVICES FOR  
DETECTING TISSUE CELLS

DECISION ON PETITION TO  
WITHDRAW OF HOLDING  
OF FINALITY

This is a decision on the petition filed on Feb. 1, 2006 to withdraw the finality of the Office Action of Jan. 26, 2006. The petition is being considered pursuant to 37 CFR 1.181 and no fee is required for the petition.

The petition is **DISMISSED as moot.**

In the petition the applicant requested a withdrawal of the finality of the Office action mailed on Jan. 26, 2006. In support of his petition, the applicant argues that the examiner's final rejection of Jan. 26, 2006 is essentially a final rejection on new grounds not previously raised by the examiner.

The record shows that:

- 1) In response to a non-final Office action, on Nov. 14, 2005, the applicant filed an amendment to claim 11 and in the remarks section of the amendment, requested the examiner to point out specifically where the Kovacs reference teaches the limitations set forth in claims 20-22 so that applicant has a full and fair opportunity to respond.
- 2) On Jan. 26, 2006, the examiner issued a final Office action and addressed applicant's inquiry with respect to claims 20-22 by stating that Kovacs inherently disclosed multiple isotope since the spectrophotometer is grates to accommodate multiple wavelength or ranges of wavelength of the radioisotope emission when under excitation.
- 3) On Feb. 1, 2006, the applicant filed the current request for withdrawal of finality of office action and issuance of a new office Action.
- 4) On May 22, 2006, the applicant filed an RCE for further continuing examination of the application.

5) On Jul. 5, 2006, the examiner withdrew the finality of the final Office action of Jan. 26, 2006 and issued a non-final Office action.

In view of the prosecution history, the relief the applicant requested, namely the withdrawal of the finality of the Jan. 26, 2006 Office Action, has already occurred. Accordingly, the petition is dismissed as moot.

Any inquiry regarding this decision should be directed to Marc Jimenez, Training Quality Assurance Specialist, at (571) 272-4530.

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